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IN THE SUPERIOR COURT

STATE OF ARIZONA, COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

JAMES ARTHUR RAY,

Defendant.

V1300CR201080049

**STATE'S BENCH MEMORANDUM RE:
WITHDRAWAL OF 404(B) NOTICE
RELATING TO NON-SWEAT LODGE
EVENTS and
NOTICE OF EXPERT TESTIMONY
PURSUANT RULE 703, ARIZ. R. EVID.**

(The Honorable Warren Darrow)

Comes now the State of Arizona, through undersigned counsel, and respectfully provides notice to Court and counsel that the State withdraws its 404b Notice of Intent only with respect to injuries occurring at non-sweat lodge James Ray events. Reasons in support are more fully set forth below.

MEMORANDUM OF POINTS AND AUTHORITIES

A. Withdrawal of Notice of Intent Pursuant to Rule 404B: Evidence of Injuries Occurring at JRI Non-Sweat Lodge Events Only.

In the State's Response to Defendant's Motion in Limine (No. 1) to Exclude Evidence of Prior Acts Pursuant to Ariz. R. Evid. 404(B) and 403, the State noticed its intent to introduce at trial evidence of injuries occurring at non-sweat lodge events conducted by James Ray. The State withdraws that intent at this time and limits its Notice of Intent to Introduce 404b Acts to the injuries and circumstances relating to the JRI prior sweat lodges, including those conducted in 2005, 2006, 2007, and 2008.

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COUNTY OF YAVAPAI, ARIZONA

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BY: Ivy Rios

1 B. Expert Testimony Will Include Review of Injuries and Behaviors from Other Events

2 To date, the State has retained two expert witnesses to testify at trial. Mr. Rick Ross will
3 present testimony relating to techniques used in Large Group Awareness Training (LGAT) and
4 Neuro-Linguistic Programming (NLP) to aid the jury in understanding the group dynamics
5 during the JRI Spiritual Warrior Seminar in the sweat lodge ceremonies. In preparing for his
6 testimony, it is expected Mr. Ross will review video and other documentation, which will be
7 provided to Defendant, relating to several JRI events. Evidence relating to these events as relied
8 upon by Mr. Ross is admissible pursuant to Rule 703, Ariz. R. Evidence, subject to the balancing
9 test set forth in Rule 403, Ariz. R. Evidence.
10

11 Rule 703, Ariz. R. Evid., "allows an expert to testify as to his opinion based on 'facts or
12 data' not in evidence but perceived or 'known' to him before the hearing." *State v. Lundstrom*,
13 161 Ariz. 141, 145, 776 P.2d 1067, 1071 (1989). See also *State v. Wood*, 180 Ariz. 53, 66, 881
14 P.2d 1158, 1171 (1994) ("Subject to Rule 403 limitations, expert witnesses may disclose facts
15 not otherwise admissible if they form a basis for their opinions and are of a type normally relied
16 on by experts." (citing Rule 703, Ariz. R. Evid.; *Lundstrom*, at 145, 776 P.2d at 1071.)). "Facts
17 or data underlying the testifying expert's opinion are admissible for the limited purpose of
18 showing the bases of that opinion, not to prove the truth of the matter asserted." *Lundstrom* at
19 148, 776 P.2d 1067, 1074, (citing *Lynn v. Helitec Corp.*, 144 Ariz. 564, 568, 698 P.2d 1283,
20 1287 (App. 1984.) Rule 703, Ariz. R. Evid., "permits wide latitude in expert testimony to allow
21 explanation of the facts underlying an opinion." *Mohave Elec. Co-op., Inc v. Byers*, 189 Ariz.
22 292, 302, 942 P.2d 451, 461 (App. 1997).
23

24 At this time, the State has not provided any materials to Mr. Ross to review for trial.
25
26 Once the State identifies the materials for Mr. Ross to review, the materials will be identified to

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1 Defendant and, if not previously disclosed, disclosed. Prior to trial, Defendant will have an
2 opportunity to interview Mr. Ross regarding his opinion and testimony.

3 Once Mr. Ross's review is complete, the State will move this Court to perform the
4 balancing test in Rule 403 and to find the evidence admissible. "Under Rule 403, a trial court
5 may weigh the value of admitting the facts or data sought to be disclosed as a basis of an expert
6 opinion against the dangers of unfair prejudice arising from such disclosure." *Lundstrom*, 161
7 Ariz. at 148, 776 P.2d at 1074. At this time, such a motion is premature.

8
9 The purpose of this Memorandum is to provide notice to this Court and Defendant of the
10 State's decision to withdraw its notice of intent regarding Rule 404b evidence of the injuries that
11 have occurred at James Ray non-sweat lodge events. Notwithstanding this decision, evidence
12 relating to other James Ray events may still be admissible through the testimony of expert
13 witness Rick Ross, pursuant to Rule 703, Ariz. R. Evidence.

14
15 RESPECTFULLY submitted this 21st day of October, 2010.

16 By Sheila Sullivan Polk
17 SHEILA SULLIVAN POLK
YAVAPAI COUNTY ATTORNEY

18 **COPIES** of the foregoing emailed this
19 22nd day of October, 2010:

20 Hon. Warren Darrow
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26 By: Kathy Durrer

COPIES of the foregoing delivered this
22nd day of October, 2010, to

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By: Kathy Durrer